

FROM THE ACADEMY

Official Position of the American Academy of Clinical Neuropsychology on Ethical Complaints Made Against Clinical Neuropsychologists During Adversarial Proceedings

Licensing board and ethics committee complaints can serve to alert authorities that a psychologist has not met a state's professional standards or a professional association's ethical standards. This is an important and useful function, both for the protection of the public and to maintain the integrity of the discipline of psychology. However, the increasing participation of clinical neuropsychologists in adversarial proceedings, such as disability evaluations and court-ordered evaluations, has placed some practitioners at the receiving end of licensing board and ethics committee complaints that are not designed to protect the public or maintain the integrity of the profession. In some parts of the United States, attorneys, 'treating psychologists',¹ and examinees have adopted a strategy in litigation and in instances of *independent medical examination*² (IME; e.g., determination of disability status for insurance benefit) of attempting to remove neuropsychologists, as well as other experts, from these types of forensic practice in their locale by

filing ethics complaints against the experts. It appears that some of these complaints may be intended to weaken a particular expert's credibility and thereby strengthen either the plaintiff's present case or future plaintiff's cases that will be seen by that same expert. In response to an increasing number of reports from American Academy of Clinical Neuropsychology (AACN) members, the AACN Board of Directors wanted to address the potential problem of these specious ethics complaints. At the outset, it seems clear that such a strategy in itself appears to involve ethical violations (e.g., Standard 1.07, Improper Complaints) *if*, rather than attorneys, the complainants were psychologists. It is less clear that attorneys, who are governed by different principles, would be perceived as unethical in carrying out such obviously blameworthy acts.

Many ethical concerns originate within forensic proceedings because of the complexity of issues addressed and the all too human weakness of strong emotional responses that occur when

Address correspondence to: Jerry Sweet, ENH Medical Group, Psychiatry and Behavioral Sciences, 909 Davis Street, Suite 160, Eranston, IC 60201, USA. Tel.: +1-847-425-6445. Fax: +1-847-425-6408. E-mail: j-sweet@northwestern.edu

Accepted for publication: September 20, 2003.

¹The terms 'treating psychologist' commonly refer to a practitioner who originally evaluated an examinee within a routine clinical context and later provides limited opinions about that prior assessment or treatment as a fact witness within a forensic context. Almost always, a neuropsychological evaluation performed by a treating psychologist would occur earlier in time than an evaluation provided by a neuropsychologist retained by a defense attorney or disability insurance company.

²Although it could be termed more accurately an "independent psychological examination", most U.S. jurisdictions prefer to simply apply "independent medical examination" generically to all evaluations by healthcare providers when the goal is to inform an administrative or judicial proceeding. As such, "IME" includes psychological and neuropsychological evaluations performed by clinical neuropsychologists.

professional opinions are challenged aggressively; most of these initial concerns disappear when the forensic proceeding is concluded. Ideally, an ethics committee or licensing board that receives an ethics complaint, the genesis of which is a forensic evaluation, would consider and be guided by the following points:

- (1) when possible, investigations of ethical concerns should be set aside until the end of any adversarial proceeding that could benefit the complainant;
- (2) members of an investigating body should consider possible self-interested motivations of complaining psychologists, examinees, and/or attorneys who have vested interests in IME or other adversarial proceedings that are antagonistic to the complaine;e;
- (3) members of the investigating body should have no prior experience either with the law firms or psychologists involved in the case identified by the complainant;
- (4) investigations of some complaints made to state ethics committees and licensing boards against neuropsychologists require expertise of specialists in clinical neuropsychology;
- (5) forensic peer review experts should be selected from a different geographic region in order to minimize the possibility of any conflict of interest in local adversarial activities; and
- (6) an objective of the strategy of making multiple complaints against the same practitioner could be to skew the perspective of the investigating body that 'something' must be wrong for so many complaints to be filed, even though each case individually is not found to have merit.

The complex nature of forensic neuropsychological practice, which so frequently involves adversarial proceedings, likely will continue to demand of practitioners a keen awareness of relevant ethical guidelines and their applicability to the case scenarios that commonly develop within adversarial proceedings. Fundamentally, ethical behavior in a forensic neuropsychologist is not simply an aspirational goal; ethical behavior is an essential component of being an effective forensic expert, if he or she is to be relied upon to render an unfailingly objective opinion.

There is no basis for believing a priori that an individual neuropsychologist will render biased opinions simply because she or he has been retained to do so by a law firm or insurance company. Conversely, no a priori value judgment regarding lack of objectivity or bias would be appropriate simply because of retention by the plaintiff or claimant in such a proceeding.

Clinical neuropsychologists bear no greater burden of objectivity, nor do they represent any greater possible threat of prejudice in rendering forensic opinions than any other group of health-care experts who become involved in adversarial proceedings. In fact, the field of neuropsychology has fostered reflection on the relevant issues pertaining to the importance of maintaining objectivity in adversarial proceedings, which is manifested in the neuropsychological literature (e.g., Lees-Haley & Cohen, 1999; McSweeney, 1997; Sweet & Moulthrop, 1999; van Gorp & McMullen, 1997). In all practice activities, whether routine clinical assessments or forensic assessments, clinical neuropsychologists are obligated to adhere to the Ethical Principles of Psychologists and Code of Conduct created by the American Psychological Association (2002) to guide its members. Interpretation and discussion of these principles as they apply to the practice of clinical neuropsychology, in general (e.g., Binder & Thompson, 1995; Bush, in press; Bush & Drexler, 2002; Johnson-Greene, Hardy-Morais, Adams Hardy, & Bergloff, 1997) and to the practice of forensic neuropsychology, in particular (e.g., Adams, 1997; Bush, in press; Grote, Lewin, Sweet, & van Gorp, 2000; Guilmette & Hagan, 1997; Johnson-Greene & Bechtold, 2002; Sweet, Grote, & van Gorp, 2002) can be found in the neuropsychological literature, which is available to inform practitioners, ethics committees, and licensing boards. Additionally, the National Academy of Neuropsychology's recently created position paper on issues pertaining to conducting IMEs is a relevant resource for practitioners (Bush, et al., in press).

ACKNOWLEDGMENTS

At the request of the AACN Board of Directors, initial drafts of this position paper were created by a

subcommittee of the Board, consisting of Jerry Sweet, Manfred Greiffenstein, Ted Peck, and Michael Schmidt.

REFERENCES

- Adams, K. (1997). Comment on ethical considerations in forensic neuropsychological consultations. *The Clinical Neuropsychologist, 11*, 294–295.
- American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist, 57*, 1060–1073.
- Binder, L., & Thompson, L. (1995). The ethics code and neuropsychological assessment practices. *Archives of Clinical Neuropsychology, 10*, 27–46.
- Bush, S. (Ed.). (in press). *Ethics casebook for neuropsychologists*. Lisse, Netherlands: Swets & Zeitlinger.
- Bush, S., & Drexler, M. (Eds.). (2002). *Ethical issues in clinical neuropsychology*. Lisse, Netherlands: Swets & Zeitlinger.
- Bush, S.S., Barth, J.T., Pliskin, N.H., Arffa, S., Axelrod, B.N., Blackburn, L.A., Faust, D., Fisher, J.M., Harley, J.P., Heilbronner, R.L., Larrabee, G.J., Ricker, J.H., & Silver, C.H. (in press). Independent and court-ordered forensic neuropsychological examinations: Official NAN position. *Archives of Clinical Neuropsychology*.
- Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior, 15*, 655–665.
- Grote, C., Lewin, J., Sweet, J., & van Gorp, W. (2000). Responses to perceived unethical practices in clinical neuropsychology: Ethical and legal considerations. *The Clinical Neuropsychologist, 14*, 119–134.
- Guilmette, T., & Hagan, L. (1997). Ethical considerations in forensic neuropsychological consultation. *The Clinical Neuropsychologist, 11*, 287–290.
- Johnson-Greene, D., & Bechtold, K. (2002). Ethical considerations for peer review in forensic neuropsychology. *The Clinical Neuropsychologist, 16*, 97–104.
- Johnson-Greene, D., Hardy-Morais, C., Adams, K., Hardy, C., & Bergloff, P. (1997). Informed consent and neuropsychological assessment: Ethical considerations and proposed guidelines. *The Clinical Neuropsychologist, 11*, 454–460.
- Lees-Haley, P., & Cohen, L. (1999). The neuropsychologist as expert witness: Toward credible science in the courtroom. In J. Sweet (Ed.), *Forensic neuropsychology: Fundamentals and practice*. Lisse, Netherlands: Swets & Zeitlinger.
- McSweeney, A.J. (1997). Regarding ethics in neuropsychological consultation: A comment on Guilmette and Hagan. *The Clinical Neuropsychologist, 11*, 291–293.
- Sweet, J., Grote, C., & van Gorp, W. (2002). Ethical issues in forensic neuropsychology. In S. Bush & M. Drexler (Eds.), *Ethical issues in clinical neuropsychology*. Lisse, Netherlands: Swets & Zeitlinger.
- Sweet, J., & Moulthrop, M. (1999). Self-examination questions as a means of identifying bias in adversarial cases. *Journal of Forensic Neuropsychology, 1*, 73–88.
- van Gorp, W., & McMullen, W. (1997). Potential sources of bias in forensic neuropsychological evaluations. *The Clinical Neuropsychologist, 11*, 180–187.